

## **Transportation Reauthorization Status Update**

### **August 1, 2005**

Congress passed HR 3, SAFETEA-LU on July 29, 2005. It must now be signed by the President. I have included a summary of the bill that was done by AASHTO.

#### AASHTO Summary of Conference Provisions

The full text of the conference agreement is available on the Internet at <http://www.house.gov/rules/109textTEALU.htm>.

When enacted, the new law will address a broad range of transportation issues ranging from safety to expediting environmental reviews.

One of the last issues to be resolved by conferees was the minimum rate of return -- a central issue to so-called "donor" states that send more tax revenue to the federal Highway Trust Fund than they ultimately receive. Under the compromise agreed to by conferees the minimum guarantee will rise from 90.5 percent in 2005, under the new act, to 91.5 percent in FY 2006 and 2007 and then to 92 percent in fiscal years 2008 and 2009.

The bill includes \$22 billion in congressionally designated projects, including \$16 billion deemed high-priority and another \$6.2 billion deemed projects of national and regional significance.

The measure preserves the all important funding guarantees and assures that if additional receipts become available they can be used for the highway program. It also includes significant innovative-financing provisions, such as:

- Authority for issuance of private-activity bonds;
- Improvements to the Transportation Infrastructure Finance and Innovation Act (TIFIA); and
- Expansion of state infrastructure-bank provisions to all states.

Other provisions of the bill would provide for:

- Enhanced emphasis on safety via increased funding for data, research, safe routes to school, improvements to hazardous highway locations, rail grade crossings, and driver behavior programs;
- Increased investment in research and development with higher funding for the state planning and research program, university research, National Academy of Science's Cooperative Research Programs, and a new Future Strategic Highway Research Program (FSHRP). Also included is funding for Centers of Transportation Excellence for state departments of transportation (DOTs);
- Greater flexibility for state DOTs to use federal funding for operational improvements and engineering, including eligibility for traffic management and user information for better operation of the nation's roadways; enhanced eligibility in the bridge program; and enhanced flexibility in the use of design-build.

#### Environmental and Planning Changes

- **Project Development Process.** The bill establishes a streamlined project development process for projects requiring an environmental impact statement (EIS). This streamlined process also can be applied to other projects, such as those requiring an Environmental Assessment (EA). The new process addresses agency coordination, public involvement, dispute resolution, and comment deadlines. These provisions will speed up the project development process without sacrificing any environmental protection.
- **Section 4(f) -- "De Minimis" Exemption.** The bill establishes an exemption from Section 4(f) for projects with "de minimis" impacts on Section 4(f) resources (historic sites, parks, recreation areas, wildlife refuges). This exemption requires concurrence of the agency official with jurisdiction over the resource. If the exemption applies, it is not necessary to meet the traditional "no prudent and feasible alternative" test under Section 4(f). This provision alone will cut many months off the project development process for projects with minor impacts on 4(f) resources.
- **Section 4(f) -- Clarification of "Prudent and Feasible" Test.** The bill requires U.S. DOT to issue new regulations clarifying the "prudent and feasible" standard applied under Section 4(f). This provision does not change the legal protection for Section 4(f) resources. Instead, it directs U.S. DOT to "clarify the application of the legal standards to a variety of different types of transportation programs and projects depending on the circumstances of each case." This rulemaking will help to improve flexibility and predictability in the implementation of Section 4(f), while preserving protections for Section 4(f) resources.
- **Section 4(f) -- Interstate Exemption.** The bill exempts the Interstate System from being treated as a historic resource under Section 4(f). A similar exemption was previously adopted by the Advisory Council on Historic Preservation with regard to Section 106 of the National Historic Preservation Act. Under these exemptions, individual elements of the System that warrant historic protection -- for example, a historic bridge -- will be designated by FHWA and will continue to receive protection under both Section 4(f) and Section 106. The remainder of the Interstate System will not be considered a historic resource.
- **180-Day Deadline for Legal Claims.** The bill establishes a statute of limitations for lawsuits challenging federal agencies' approvals for highway and transit projects. This provision applies to National Environmental Policy Act (NEPA) lawsuits as well as lawsuits based on other federal laws. It shortens the time for bringing such a lawsuit from six years to 180 days. This means that a state can now proceed more quickly toward project execution without fear of late lawsuits interrupting construction and costing many thousands of dollars.
- **Delegation of CEs.** The bill creates a new program authorizing the delegation of U.S. DOT's environmental responsibilities for categorical exclusions (CEs). This program will allow states to quickly move forward with smaller and less controversial projects. This program is not a pilot and is not limited to a specific number of States; all States are eligible to obtain CE delegation.

- **Stewardship Pilot Program.** The bill establishes a five-state "stewardship pilot program," which will allow delegation of all U.S. DOT environmental responsibilities to the state DOTs in a small group of states. This delegated authority would include NEPA, Section 4(f), and other FHWA responsibilities for all projects in a State -- regardless of whether the project involves an EIS, EA, or CE. This pilot program is intended to allow State DOTs to take on greater responsibility for environmental compliance and to demonstrate environmental stewardship in meeting and exceeding environmental requirements.
- **Conformity and Planning Process.** The bill includes numerous modifications to the transportation planning and air quality conformity requirements. These include establishing a four-year cycle for updating metropolitan transportation plans and making conformity determinations, and allowing conformity findings to be based on a 10-year horizon under certain circumstances, as well as other changes. These modifications will provide greater flexibility in transportation planning and air quality conformity, without reducing protection for air quality.

#### Program Oversight Provisions

The bill contains new oversight provisions including:

- Requirements for value engineering analysis;
- Assurances of financial systems integrity;
- Requirements for states to develop and maintain a record of financial plans for projects over \$100 million

#### Short Term Extensions

The Congress on Wednesday passed the 11th short-term extension of the federal-aid highway and transit programs continuing their operation until midnight Saturday. Yet another extension was in the offing today -- to allow an additional two weeks for transmittal of the bill to the President, and arrangements for a signing ceremony. The White House has signaled that the President will sign the bill.

The 14-day extension provides administrative expenses for the Federal Highway Administration (FHWA), continues reimbursements to states, and allows states to use any unobligated authority on their books. It does not include any additional obligation authority or contract authority.